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Dear Sir/Madam,

ASH Scotland response to Sub-Committee consideration of the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012

This letter constitutes ASH Scotland's response to the above consultation – we have structured our response to directly respond to the six specific questions asked.

Action on Smoking and Health (ASH) Scotland is an independent Scottish charity working for a healthier Scotland, free from the harm and inequality caused by tobaccoⁱ. Our vision is of a healthier Scotland, free from the harm and inequality caused by tobacco. We work towards this goal through campaigning for more effective regulation of tobacco and the provision of effective support for smokers who want to quit; researching effective interventions to reduce the harm caused by second-hand smoke; working with groups that suffer health inequalities as a result of tobacco and smoking, including black and minority ethnic communities and young people; and providing professional training in smoking cessation.

We were closely involved in the development of Scottish legislation for smoke-free public places and are monitoring the growing evidence base showing the benefits of this legislationⁱⁱ. In Scotland, which enacted legislation similar to that in Wales, the formal evaluation commissioned found that after the legislation came into force there was:

- a reduction in the rate of child asthma admissions of 18% per year compared to an increase of 5% per year in the years preceding it;
- a 17% reduction in heart attack admissions to nine Scottish hospitals, compared with an annual reduction in Scottish admissions for heart attack of 3% per year in the previous decade; and
- no evidence of smoking shifting from public places into the home.

The ban on smoking in enclosed public spaces has been an outstanding success in public health policy in both Scotland and Wales – probably the most successful and popular public health legislation our countries have seen in recent years. In a short period of time smoke-free public places have become the desired norm, with support running at around 80% of adults in both Wales and Scotland. Similar legislation is spreading internationally, with Ukraine and Andorra amongst the countries implementing bans during 2012.

We firmly believe that the proposed amendment would seriously undermine a popular and effective public health measure and is not supported by any credible evidence base. To pass this amendment would open the smoke-free policy in Wales, and elsewhere, to further

pressure from other industries who would also like to negotiate exemptions in pursuit of claimed commercial interests. We therefore urge the Sub-Committee to reject the proposal.

1) Is there a commercial need for this amendment to exempt performers from smoke-free requirements?

No. While we acknowledge the desire to respect artistic integrity, creative industries need to respect the same social responsibilities as other industries. In order to deliberately introduce a hazardous substance into the working environment, a very strong case should be made for the need to do so, backed up by firm evidence. This has not happened here, with only broad concerns articulated over losing out to competitors in England, and strong evidence that the appearance of smoking can be faked in various ways.

Cigarette props such as nicotine-free electronic cigarettes are realistic, cheap and already widely used. When electronic cigarettes can be used to compete with real cigarettes in smoke-ring battlesⁱⁱⁱ they can certainly be considered as part of a range of options to use on a film set. Special effects to simulate smoke including computer generated imagery (CGI) are also available and have been used in many productions in Wales. Surely it cannot be beyond the creative abilities of an industry which can make Daleks fly to solve the challenges of portraying smoking onscreen without risking the health of performers and crew?

This application to be treated as a special case would seem to rest on the back of vague, unproven arguments about possible future economic benefits – and yet we are aware that Welsh production companies have scored some notable coups in attracting productions away from Bristol under the current legislative provisions.

2) Will this amendment achieve its aim of supporting the television and film industry in Wales?

No. As indicated above we do not accept that there is a real need to introduce actual tobacco smoke in order to produce the visual appearance of smoking. We would suggest that the opposite is true and that there is a real risk of generating harm to the industry.

These proposals for change have not been supported by any examples given of other industries being allowed to put at risk the health and safety of their employees in order to gain potential commercial advantages nor have we been given examples of exemptions to health and safety provisions to allow creative industries to require other practices that are harmful to health. Any company which knowingly exposes its staff to harmful tobacco smoke would generate the potential for future litigation by individuals whose health has been damaged. This new risk should be weighed up in the overall commercial balance sheet.

Focussing on the people involved in the television and film industry, rather than just the commercial interests, it is clearly bad practice to put workers at risk in order to generate competitive advantage, and it is likely that performers would be pressured into using tobacco which is known to be an addictive and harmful substance, with no safe level of smoked use.

3) Is there sufficient clarity about the circumstances in which the exemption applies?

No. The definition of “artistic integrity” under which in the proposed changes to regulations smoking would be allowed is vague and open to wide interpretation. Creative performances regularly use props, special effects and acting techniques to suggest harmful activities (such as stabbing, shooting, injecting illegal drugs) without requiring actors to actually perform these activities.

The restriction that no children should be present and no members of the public allowed to watch the scene is very difficult to police and enforce. This clear acceptance of the health risks associated with tobacco smoke illustrates why the ban on smoking in enclosed public places was introduced, why it has been successful and why it should be maintained in its full integrity.

TV and film production companies should have the same responsibilities to their workers (performers and crew) as any other industry. They are not generally permitted unilateral exemptions to health and safety regulations in order to realistically recreate for example Dickensian factories, road traffic fatalities, or chemical spillages. No adequate reason is given as to why smoking should be made an exception.

4) Do the conditions offer adequate protection to other performers, production staff and members of the public?

No. In fact the opposite is true and the Sub-Committee has been asked to consider a proposal that would deliberately introduce a known health risk to the workplace. There is a significant health risk to any actor who is encouraged, or pressured, to carry out this lethal, addictive activity in order to provide ‘artistic integrity’.

There is also clear scientific consensus on the risks of second hand smoke, to which other cast and crew would be exposed. The scientific literature on second hand smoke has been extensively and repeatedly reviewed at regular intervals by a range of national and international expert groups. These include the U.S. Surgeon General^{iv,v}, the U.S. Environmental Protection Agency^{vi}, the U.S. National Toxicology Program^{vii}, the UK Scientific Committee on Tobacco and Health^{viii}, the Royal College of Physicians^{ix,x} and the World Health Organization’s International Agency for Research on Cancer^{xi}.

These reviews have scrutinised the entirety of the scientific literature on SHS available to them and carefully considered issues of study bias and validity. They consistently conclude that exposure to SHS causes disease, including heart disease and lung cancer. The Center for Disease Control (CDC) in the US says is ‘There is no risk-free level of exposure to second-hand smoke. Even low levels of exposure can harm non-smokers’ health’.^{xii}

5) Might there be any unintended consequences of introducing this exemption?

Yes. Other companies and industries, for example those amongst the hospitality sector who continue to oppose the smoke-free legislation, can be expected to make their own claims for exemptions from the law. They can also be relied upon to claim commercial benefits from doing so, although they too will struggle to provide evidence for the claim. There is a real risk that the comprehensive nature of the legislation, which has been crucial to its success, will be undermined.

In both Scotland and Wales the real health risks from second hand smoke have resulted in tobacco smoke being defined as a hazardous substance and therefore treated as a health

issue rather than a commercial one. Robust debate in both countries resulted in a consensus that any permitted exemptions to the smoke-free law should be based on humanitarian grounds (for example where a public place is also a place of residence) rather than on commercial interests, which would have left the strength and consistency of the measure in tatters under competing claims from pubs, restaurants and other vested commercial interests.

Furthermore, a strong argument can be made that the TV and film industries have a particular responsibility not to highlight or glamourise smoking. There is sufficient evidence to conclude that there is a causal relationship between depictions of smoking in the movies and the initiation of smoking among young people.^{xiii} Permitting smoking on set undermines important efforts by charities, schools, health workers and others to de-glamourise and de-normalise smoking, and is likely to lead to increased portrayal of smoking on screen, which in itself can contribute to undermining health policies to reduce tobacco use.

6) What health policy considerations are relevant to this amendment?

This legislation was based on the firm evidence that second hand tobacco smoke is a health hazard, allied to the principle that while smokers may make their own health choices they should not allow their smoke to impact on others, including those who are employed to be present and so have no option to remove themselves.

We are aware of the proposed restriction that no children should be present on set when smoking takes place but also note that Asthma UK state that asthma rates in Wales are amongst the highest in the world^{xiv} and are 10% above the UK average^{xv}. To allow smoking on film and tv sets will have particular impact on these people and other vulnerable groups.

ASH Scotland briefings on second hand smoke in cars^{xvi} and on children's exposure to second hand smoke in the home^{xvii} provide further background information on the health impacts of second hand smoke.

We would be happy to help with any further information relating to this matter.

Sheila Duffy
Chief Executive
ASH Scotland

ⁱ See www.ashscotland.org.uk [Accessed 28 December 2012]

ⁱⁱ See <http://www.ashscotland.org.uk/ash/5510> [Accessed 28 December 2012]

ⁱⁱⁱ See <http://www.youtube.com/watch?v=-f3eQvXvtm4&feature=fvwrel> [Accessed 28 December 2012]

^{iv} U.S. Department of Health and Human Services. 1986. The Health Consequences of Involuntary Smoking. A Report of the Surgeon General. Rockville (MD): U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health. DHHS Publication No. (CDC) 87-8398.

^v U.S. Department of Health and Human Services. 2006. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

^{vi} U.S. Environmental Protection Agency. 1992. Respiratory health effects of passive smoking: Lung cancer and other disorders. U.S. Government Printing Office, Washington, D.C. EPA/600/006F.

^{vii} National Toxicology Program, National Institute of Environmental Health Sciences. 2000. Report on Carcinogens, 9th edition. U.S. Department of Health and Human Services.

^{viii} Scientific Committee on Tobacco and Health (SCOTH). 2004. Secondhand smoke: Review of evidence since 1998, updated of evidence on health effects of secondhand smoke. Department of Health. Available from: http://www.dh.gov.uk/ab/SCOTH/DH_095262 [Accessed 15 October 2012]

^{ix} Royal College of Physicians. 2005. Going smoke-free: The medical case for clean air in the home, at work and in public places. A report by the Tobacco Advisory Group. London: RCP. Available from: <http://bookshop.rcplondon.ac.uk/details.aspx?e=4> [Accessed 15 October 2012]

^x Royal College of Physicians. 2010. Passive smoking and children. A report by the Tobacco Advisory Group. London: RCP. Available from: <http://bookshop.rcplondon.ac.uk/details.aspx?e=305> [Accessed 15 October 2012]

^{xi} World Health Organization, International Agency for Research on Cancer. 2002. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 83, Tobacco Smoke and Involuntary Smoking. IARC. Lyon, France.

^{xii} Citing U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006

<http://www.surgeongeneral.gov/library/reports/secondhandsmoke/chapter1.pdf> (page 11)

^{xiii} McAfee T, Tynan M. Smoking in Movies: A New Centers for Disease Control and Prevention Core Surveillance Indicator. Prev Chronic Dis 2012;9:120261. DOI: <http://dx.doi.org/10.5888/pcd9.120261>

^{xiv} <http://www.asthma.org.uk/how-we-help/our-work-around-the-uk/cymruwales/> [Accessed 28 December 2012]

^{xv} http://www.asthma.org.uk/media/141047/wish_you_were_here_-_uk_report.pdf [Accessed 28 December 2012]

^{xvi} <http://www.ashscotland.org.uk/media/3796/Smokingincars.pdf> [Accessed 10 January 2013]

^{xvii} http://www.ashscotland.org.uk/media/3809/Smokinginhome_Briefing_Feb11.pdf [Accessed 10 January 2013]